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Gov. Johanns: U.S. Supreme Court Approves Republican River Settlement

(Lincoln, NE) Gov. Mike Johanns along with Attorney General Jon Bruning today announced that the U.S. Supreme Court approved the settlement negotiated by the States of Nebraska, Kansas and Colorado to resolve the Republican River litigation.

Gov. Johanns said, "Nebraska is pleased this litigation has been brought to a satisfactory conclusion. The settlement not only secures Nebraska's share of the basin water supply, it also avoids the prospect of paying as much as \$100 million to Kansas in monetary damages for past actions."

The case was filed in May 1998 when the State of Kansas filed a motion with the U.S. Supreme Court alleging that the State of Nebraska was violating the Republican River Compact. In January 1999, the Court granted Kansas' motion. In November 1999, the U.S. Supreme Court appointed Vincent L. McKusick as the Special Master to hear the case. In May 2001, after a number of initial legal arguments and rulings, the Special Master agreed to postpone the progression of the case in order to allow the three Compact States, Nebraska, Kansas and Colorado, to engage in settlement negotiations. These negotiations culminated in a settlement package that was approved by the Governors and Attorneys General of all three states in December 2002.

Nebraska Attorney General Jon Bruning said, "This is a great day for Nebraskans. The settlement of this case should serve as a model for the states in the current Missouri River lawsuits."

The Republican River Compact allocates a certain portion of Republican River water to each state, and the states cannot use more than their respective allocation.

The settlement achieves several objectives from Nebraska's perspective. First, the agreement provides that all claims for damages are waived. Second, the agreement provides Nebraska the flexibility to use its allocation anywhere in the state in normal years and anywhere upstream of Guide Rock in dry years. Additionally, the agreement allows all states to measure Compact compliance by averaging allocations from year to year thereby allowing some ability to use water from wet years during drier years.

Consistent with the Special Master's first decision, Nebraska has agreed to include consumptive use of ground water to the degree that it depletes stream flow. The settlement also includes a process designed to resolve future disputes short of returning to the Supreme Court. All parties have agreed to participate in a dispute resolution process prior to the filing of additional litigation.

"We're pleased this litigation has drawn to a close, and we look forward to working in partnership with Kansas and Colorado to implement the settlement," Gov. Johanns said.

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